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8. *Johnson v. St. Paul Mercury Insurance*, 236 So. 2d 216.
9. *Morrison v. New Hampshire Insurance Co.*, 249 La. 546, 187 So. 2d 729 (1966).
10. *Mutual Life Insurance Company of New York v. Hill*, 193 U. S. 551 (1904).
11. *National Acceptance Co. v. Wallace*, 194 So. 2d 194 (2d Cir. 1967).
12. *Williams v. McFerrin*, 242 F. 2d 53 (5th Cir. 1957).
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14. *Wilson v. Sovereign Camp W. O. W.*, 179 La. 373, 154 So. 28 (1934).

Statutes:

Revised Statute 22:177—The Louisiana Notice Statute.

Text, Articles and Other Authorities:

1. Cavers, The *Choice-of-Law* Process, 88-96 (1965) passim; cf.

2. "Comment, False Conflicts," 55 Calif. L. Rev. 74 (1965).

3. Coyne, Raymond, "Contacts, Conflicts and Choice—Influencing Consideration," *University of Illinois Law Forum*, Vol. 1969, p. 323, 337.

4. Currie, *The Constitution and the Choice of Law: Governmental Interests and the Judicial Function*, 26 U. Chi. L. Rev. 9 (1959).

5. Currie, *Essays on the Conflict of Laws*, 177, 180 (1963).

6. Ehrenzweig, "False Conflicts" and the "Better Rule": Threat and Promise in Multistate Tort Law, 53 Va. L. Rev. 847 (1967).

7. Traynor, *Is This Conflict Really Necessary?*, 37 Texas L. Rev. 657 (1959).

Number 1427

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

AETNA LIFE INSURANCE COMPANY,

Petitioner

versus

DON E. LESTER, JR.,

Respondent

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

STATEMENT OF THE CASE

Don E. Lester, Jr., Plaintiff, filed suit against Aetna Life Insurance Company, Defendant, on a $50,000.00 life insurance policy issued on the life of Don E. Lester, Sr. The policy contained an automatic premium loan provision. It provided that if a premium were not paid timely, that the premium would automatically be paid under this automatic premium loan provision.

Don E. Lester, Sr. paid $2,252.50 per year for ten years, for a total of $22,525.00 in premiums.

At no time did Aetna Life Insurance Company notify Mr. Lester that his automatic premium loan provision was *not* in effect until after they advised him that his policy had lapsed for non-payment of premium.

Mr. Lester was only approximately 15 days past the grace period of the payment of this premium when he was notified by Aetna Life Insurance Company that the automatic premium loan provision was not in effect for a very technical reason, and that his policy had lapsed. Mr. Lester immediately sent Aetna Life Insurance Company the money for the premium, but Aetna Life Insurance Company still contends that the policy lapsed.

There is no proof as to when Aetna Life Insurance Company gave Mr. Lester notice that the annual premium would be due.

Plaintiff filed his suit in a Louisiana State Court to permit the Louisiana Supreme Court to decide this case. The defendant removed the case to the Federal Courts, and is requesting the Federal Courts to attempt to determine how the Louisiana Supreme Court would decide this case.

Both the District Court and the United States Court of Appeals for the Fifth Circuit have decided this case in favor of the plaintiff.

ISSUES

I. Does the Louisiana Notice Statute apply?

A. Is this a true conflict of law situation?

B. If this is a conflict of law situation, how would the Louisiana Supreme Court decide this case?

II. Is the defendant estopped from declaring the policy lapsed?

ARGUMENTS

The Louisiana Notice Statute pertaining to Life Insurance Premiums is R.S. 22:177. It provides that no insurer shall declare lapsed any policy for non-payment of premium, installment, loan or interest, unless a written notice stating the amount of such premium, installment, loan or interest, or portion thereof, due on such policy, is mailed to the insured at least 15 and not more than 45 days prior to the date when payable. Louisiana's interest in enacting this statute was to protect a Louisiana insured against losing his policy through mere neglect to pay the premium, and also to give him a fair opportunity to meet the payments when due. *Boring v. Louisiana State Insurance Company,* 154 La. 549, 97 So. 856 (1923). This statute and the jurisprudence embodies a state public policy against forfeitures of policies issued to Louisiana citizens without proper notice.

Louisiana Notice Statute applies to the instant case whether the decision is based on a "false conflict doctrine" or whether you look to the decisions by the Courts of Louisiana to determine whether or not they would protect one of their citizens in this case.

A "false conflict" occurs when one of two states related to a case has a legitimate interest in the application of its law

and policies, and the other state has none. *Gaither v. Myers*, D. C. Cir. 1968, 404 F. 2d 216, 224; *Williams v. Rawlings Truck Line, Inc.*, D. C. Cir. 1965, 357 F. 2d 581, 586; Cf. *Denny v. American Tobacco Corp.*, 308 F. Supp. 219, 222 (N. D. Cal. 1970). See generally CURRIE, Notes on Methods and Objectives in the Conflict of Laws, in Selected *Essays on the Conflict of Laws*, 177, 180 (1963); CAVERS, The *Choice-of-Law* Process 88-96 (1965), passim; cf. Traynor, *Is This Conflict Really Necessary?*, 37 Texas L. Rev. 657 (1959). See also Comment, False Conflicts, 55 Calif. L. Rev. 74 (1967). But see Ehrenzweig, "False Conflicts" and the "Better Rule": Threat and Promise in Multistate Tort Law, 53 Va. L. Rev. 847 (1967). CURRIE, *The Constitution and the Choice of Law: Governmental Interests and the Judicial Function*, 26 U. Chi. L. Rev. 9 (1958).

The defendant has argued that the laws of Louisiana and Wisconsin differ, that there is a conflict of laws and that only Wisconsin law should apply. However, Louisiana is the only state of the two states that has even the remotest interest in having its law applied to this case. Wisconsin's only contact with this case occurred and ended long ago in the single event of the delivery of the insurance policy in that state. On the other hand, the very purpose for which Louisiana enacted the Notice Statute is applicable here. Both Mr. Lester, Sr., the insured, and Mr. Lester, Jr., the beneficiary, were residents of Louisiana. The insured changed his beneficiary twice and obtained a loan on the policy while domiciled in Louisiana. After these changes were made the policy was delivered to the insured in Louisiana.

The contacts that Wisconsin had with this case are outlined on Exhibit "A", page 19, and the contacts that Louisiana had with this case are outlined on Exhibit "B", page 20.

Louisiana's interest in protecting Louisiana citizens from forfeiture without notice is clearly very much at stake in this case. Had either of the Lesters or the insurance company been domiciled in Wisconsin at the time of the death of Mr. Lester, a true conflicts of law question would exist. Since neither of the Lesters were domiciled in Wisconsin, but both were domiciled in Louisiana, and the insurance company is not domiciled in Wisconsin, there is no true conflict of laws.

Aetna Life Insurance Company has argued that if the Louisiana Supreme Court were faced with the instant case, that it would apply the *lex loci contractus* rule, and would follow the Wisconsin Law in determining the rights of the parties. We disagree. The Fifth Circuit pointed out the real issue in this case when it stated on page 13 of its Opinion:

> "The real issue is whether or not appellant is bound by the Louisiana Notice Statute."

The Louisiana Supreme Court would have no difficulty finding a reason for deciding this case in favor of the plaintiff, just as the United States Court of Appeals for the Fifth Circuit and the United States District Court had no difficulty in finding for the plaintiff.

All of the equities favor Mr. Lester, the plaintiff, in this lawsuit. Exhibit "C" shows that Aetna Life Insurance Company has received premiums totaling $22,525.00, and if it earned interest at only six (6%) per cent per annum, it

earned interest totalling $17,772.26 on the premiums, for a total of both premiums and interest of $40,297.26 on the money paid it by Mr. Lester under the contract made the basis of this litigation. In addition, it had granted Mr. Lester the benefits of its "automatic premium loan provision" in its policy. Mr. Lester was under the impression that this "automatic premium loan provision" would provide payment of any late premium for him. By applying an extremely technical interpretation of the policy, and considering the loan on the policy, and other things, the insurance company took the position that the "automatic premium loan provision" was not applicable. However, there was not one inkling of this information given to Mr. Lester until after the insurance company informed him that his policy had lapsed for failure to pay a premium. Mr. Lester immediately paid the premium.

While the Louisiana Supreme Court used some very strong language in the case of *Johnson v. St. Paul Mercury Insurance,* 236 So. 2d 216, *that* Court could distinguish the *Johnson* case from this case by simply stating that the *Johnson* case was a tort case while this was a suit on a life insurance contract. This is particularly true since Justice Sanders dissented in the *Johnson* decision and Judge Tate, the author of several of the Court of Appeal, State of Louisiana, opinions regarding "Minimum Contacts", "Grouping of Contacts" or "Center of Gravity" even in *tort* cases, and Judge Dixon, who helped decide *Johnson* in favor of Johnson, have replaced members of the Supreme Court of Louisiana that were on the bench at the time the *Johnson* opinion was rendered.

The plaintiff was willing to let the Louisiana Courts

decide this question. Suit was initially filed in State Court. It was the defendant who removed this case to the Federal Courts and now is objecting to the justice that is being rendered by the Federal Courts in this matter.

The Supreme Court of Louisiana had already discarded the *lex loci contractus* theory as it pertains to insurance contracts, as opposed to torts, before the *Johnson* decision was rendered. The *Johnson* decision did not over-rule the previous cases that had been decided by the Supreme Court of Louisiana on this point.

As early as January 18, 1965, the Supreme Court of Louisiana upheld the Second Circuit, Court of Appeal of Louisiana in the case of *Harmon v. Lumbermen's Mutual Casualty Company*, by saying:

> "The Court of Appeal held that the policy must be construed under and governed by the laws of Louisiana."

The *Harmon* case involved an action on a group accident policy. The master group policy was delivered in Illinois. The evidence did not establish where the individual certificate issued to Dr. Harmon was delivered. The Court of Appeal held:

> "We think Civil Code, Article 10, together with the decisions rendered thereunder, is ample authority for application of the law of Louisiana to the present case."

The Court held that the contract must have been intended to have effect in Louisiana, because Dr. Harmon was a resident of Louisiana, so it was to be construed under and governed by the laws of Louisiana.

The Court of Appeal decision is reported at 164 So.

2d 397, and the Supreme Court decision is reported at 247 La. 263, 170 So. 2d 646.

In an action on a fire insurance policy, in which a resident of Louisiana filed suit in a Louisiana Court against a foreign insurer for a fire loss that occurred outside of Louisiana on a policy that had been issued by an agency located outside of Louisiana, the Supreme Court of Louisiana stated:

> "We have discussed the above three cases in detail because of their importance. They have been cited and quoted in State and Federal decisions repeatedly. It appears that they are more or less the precedent of the doctrine or concept of 'Minimal Contacts' as recently enunciated. The doctrine now exists, and it has been applicable not only to suits on type of insurance policies, but also to tort actions, and actions on contract.
>
> "The immediate facts of the case at issue are always important in determining whether such 'minimal contacts' exist as would give the Court in which the plaintiff or plaintiffs filed suit jurisdiction."
> *Morrison v. New Hampshire Insurance Co.*, 249 La. 546, 187 So. 2d 729 (1966). (P. 734).

The Court went on to hold that although the policy did not state that it was payable in Louisiana, that it was the intent of the parties that the proceeds be paid in Louisiana. The Court held, on page 736:

> "The foregoing factors constrain us to conclude that 'minimum contacts' exist with and within the forum—Civil District Court for the Parish of Orleans—and with and within the State of Louisiana."

In the instant case, Aetna is to pay Lester in Louisiana.

In 1964, the Louisiana Supreme Court specifically dis-

carded the doctrine that the insurance policy must be interpreted by the law of the place where the policy is delivered. In *Ajuria v. Pan American Life Insurance Co.*, 245 La. 755, 161 So. 2d 70 (1964), the Louisiana Supreme Court decided a case regarding a *life* insurance policy. The policy had been *delivered* in Cuba. The Supreme Court held that Cuban Law would *not* be applied in interpreting the policy.

None of the above cases were over-ruled by the *Johnson* decision.

There have been numerous writings indicating that *life insurance* contracts are not to be grouped with all other contracts and torts in determining "conflicts of laws" issues, or the lack of "conflicts of laws" issues. One recent writing is by Raymond Coyne, entitled "Contacts, Conflicts and Choice—Influencing Considerations," 1969 Volume of *University of Illinois Law Forum* beginning at page 323. He stated on page 337:

> "Life Insurance contracts have also received special treatment. The law of the place of making has been especially important in insurance contract cases since there usually is no fixed place of performance of such contracts. But strict application of the law of the place of making can lead to ridiculous results. . . . The comments also stated that since the purpose of life insurance legislation is to protect the insured, it often will be necessary to choose the law of a state other than that of the domicile of the insured at the time the insurance was issued, as, for example, where application of the law of that domicile would not protect the insured. Finally, the comments indicate that the law chosen by the parties is not to be given effect if the law chosen would be less favorable to the insured than the other-

> wise applicable law. Two reason are given for this position: (1) the adhesive nature of life insurance contracts, and (2) intense public concern in life insurance contracts, particularly in protecting the insured."

All of the foregoing reasons, and there are many more, indicate that the Supreme Court of Louisiana would have absolutely no difficulty in finding for Don Lester, Jr. in the case against Aetna Life Insurance Company.

The application of Louisiana Notice Statute as opposed to the Wisconsin Law in interpreting the contract issued by Aetna Life Insurance Company to Don Lester will not deprive Aetna Life Insurance Company of property without due process of law. Had Don Lester been living in Louisiana at the time the contract was issued, *the premium would have been the same* and there would have been no question but that it would have been interpreted under the laws of Louisiana. There are situations where such an argument might have validity, such as automobile liability policies where different premiums are charged for different coverage, in different states and even in different localities within the states, but where the same premium is charged for life insurance coverage, regardless of where the policy is issued, this argument has no validity.

There is no *proof* that Aetna Life Insurance Company complied in any respect with the Louisiana Notice Statute, much less that it "fully complied" with it.

Aetna is estopped to claim that this policy lapsed for non-payment of premium, inasmuch as Aetna, by its actions, lulled Mr. Lester into the position of believing that this life insurance policy would be maintained in force and effect if

the premiums were not paid promptly when due.

For many years prior to his death, Lester had been a policy owner of two life insurance policies with Aetna. One policy was for $50,000.00, which is the policy made the subject of this litigation, and the other policy was in the amount of $32,000.00.

During the time that Lester was the owner of the $50,000.00 policy, he had paid premiums totaling $22,525.00. He always relied on Aetna to provide him with information concerning the various options and benefits under his policy. He was a man of limited education.

He knew that his policy contained an automatic premium loan option, because he requested this when he purchased the policy. Even after the company advised him that his policy had lapsed, he was of the opinion that the automatic premium loan provision of the policy should have been effective and that the policy should not have lapsed.

At no time, until after Aetna claimed that the policy had lapsed, did they advise Lester that the automatic premium loan provision was not applicable.

The Doctrine of Equitable Estoppel is designed to aid in the administration of justice where without its aid, an injustice might result. Lester had a coronary condition at the time he acquired the policy, so Aetna charged him a penalty on the premiums by showing his age to be five years older than he really was when he acquired the policy. It is assumed that Aetna was pleased tc see such a risk removed from its insuring obligation. Even if Aetna had proven that it mailed the pre-

mium notice timely and that Lester received it timely, Aetna should have given some notice to Lester that he must pay this premium due timely because his automatic premium loan provision would not be operative. It is obvious that Lester was not insurable due to his coronary condition when and/or if he received this insufficient notice, and it is obvious that he wanted to maintain the policy in effect because he sent a check to the company as soon as he was advised that the automatic premium loan provision was inoperative, which was the same time he was advised the policy had lapsed.

The Doctrine of Equitable Estoppel is designed, in law, to place the loss upon the person who occasioned it. Stated another way, where a loss must be borne by one of two innocent parties, it must be borne by the one whose conduct occasioned it. *National Acceptance Company v. Wallace*, 194 So. 2d 194 (2d Cir. 1967). In the case of *Wilson v. Sovereign Camp W. O. W.*, 179 La. 373, 154 So. 28 (1934) the Supreme Court of Louisiana stated:

> "Forfeitures are not favored in the law; and that Courts are always prompt to seize hold of any circumstances that indicate an election to waive a forfeiture, or an agreement to do so on which the party has relied and acted. Any agreement, declaration or course of action, on the part of the insurance company, which leads a party insured honestly to believe that by conforming thereto a forfeiture of his policy will not be incurred, followed by due conformity on his part, will and ought to estop the company from insisting upon the forfeiture, though it might be claimed under the express letter of a contract."

In this case, Lester honestly believed that the automatic premium loan provision of his policy was operative at all

times, and would maintain his life insurance policy in effect should premiums not be paid immediately when due.

At no time did Aetna give Lester any inkling that the automatic premium loan provision would not be applicable until after Aetna claimed that the policy had lapsed. Aetna then required that Lester submit a physician's report regarding his coronary condition, before Aetna would reinstate him. Lester was not the type of risk that they would reinstate, because he died of his coronary condition only a few months after Aetna claimed the policy lapsed.

Aetna is estopped from asserting that this policy lapsed since they failed to adequately inform Lester that the automatic premium loan provision was not operative.

It would be a gross miscarriage of justice for a Federal Court to deny plaintiff recovery of this case by placing itself in the position of the Louisiana State Courts. The plaintiff knows that the Louisiana Courts will decide in his favor. This is why the plaintiff filed this suit in State Court. If the defendant really believed that the State Court would decide against the plaintiff, the defendant would never have removed this case to the Federal Courts.

Both the United States District Court and the United States Court of Appeals for the Fifth Circuit have determined that the Notice Statutes of Louisiana apply to this case, and that Aetna failed to comply with the statute.

COMMENTS ON DEFENDANT'S PETITION FOR A WRIT OF CERTIORARI

The defendant does not mention the "automatic pre-

mium loan provision" of the policy in its Statement of the Case. The defendant indicates that the notice of premium due was mailed to Mr. Lester on April 13, 1962. There is *no proof* as to when that notice was mailed. One of the officials of Aetna quite honestly said that there was no way to determine when it was mailed. Another said it was mailed on April 13th and another said it was mailed on some other date.

The case of *Williams v. McFerrin*, 242 F. 2d 53 (5th Cir. 1957) supports the position advanced by the plaintiff in this Opposition. In that case, the insurance company had issued two policies to the insured in Indiana. The insured resided in Indiana, the insured died in Indiana, and the person to whom the proceeds were paid was appointed guardian of the grandson of the insured by Indiana Courts. Louisiana simply had no interest in the matter.

The Court held that Indiana law wauld apply. The appellants did not dispute that Indiana Law would apply. They simply stated that the Court misapplied Indiana law.

It is interesting that the Court stated in that case on page 57:

> ". . . A strict interpretation of the contract, one of the principle bases and rationales of the decision, was the strong judicial policy against forfeitures."
>
> * * * * *
>
> ". . . Courts have resisted attempts by insurers to advance purely technical defense to avoid risks freely assumed."

The case of *Mutual Life Insurance Company of New York v. Hill*, 193 U. S. 551 (1904) also supports the plaintiff more than the defendant. In that case, the insured was a resi-

dent of the state of Washington both when he acquired the policy and evidently when he forfeited the policy for non-payment of premiums over a period of four years, 1887, 1888, 1889 and 1890, and was evidently in Washington when he died. The beneficiaries were also in the State of Washington. The Court held that the laws of Washington would apply in determining whether or not the policy had lapsed. Since he had only paid one annual premium, and had failed to pay four annual premiums before he died, the Court correctly held that the policy had lapsed for non-payment of premium. In that case, this Honorable Court stated beginning on page 541:

> ". . . It is true cases arise in which one party is enabled to take advantage of some statutory provision, in compliance from the other without having himself first complied, and Court may not ignore the scope and efficacy of such statutory provisions; but, nevertheless, a Judgment of Failure to Perform against one party in favor of the other, when the latter was the first delinquent is offensive to the sense of righteousness in fair dealing. We have had before us a series of cases coming from the same jurisdiction in which, when the insured had, for a series of years, neglected to pay their insurance premiums or perform their parts of the insurance contracts, their heirs or beneficiaries have, on their deaths, sought to obtain judgments against the insurance company for the amounts which would have been due on the policies if the insureds had performed their stipulations in respect to the payment of premium. Courts have always set their faces against an insurance company, which, having received its premiums, has sought by technical defenses to avoid payment, and in like manner should they set their faces against an effort to exact payment from an insurance company when the premiums have deliberately been left unpaid.
>
> * * * *

> ". . . and the Legislature, taking into consideration the infirmaties of memory, enacted this statute for the purpose of preventing insurance companies from taking what, in homey phrase is termed 'snap judgment' on its patrons, thereby depriving them of the benefit of contracts by reason of slight negligence on their part, and when there was no real intention to rescind—a beneficient and just law if enforced in the spirit of its enactment, but oppressive and unjust if construed with narrow and literal exactness.
>
> * * * *
>
> "From every consideration of justice and fair dealing, we think the respondent should not be allowed to recover in this case."

The above cases cited by the defendant as well as *Davis v. Insurance Company of North America,* 268 F. Supp. 496 (East. Dist. of La. 1967), clearly indicate the Federal Court System, from the District Court to the Supreme Court, will not permit an insurance company to hide behind a strict, narrow, technical interpretation of a policy or a law in order to declare a policy lapsed; because it is against the public policy of states, and the public policy of the United States, to permit insurers to advance purely technical defense to avoid risks freely assumed.

CONCLUSION

This Honorable Court can uphold the decision of both the United States District Court and the decision of the United States Court of Appeals, for the Fifth Circuit under any one of the following three theories:

a) This is a "false conflicts" situation.

b) If the Supreme Court of Louisiana were presented

this case, the Supreme Court of Louisiana would decide in favor of the plaintiff, and

c) The defendant is estopped from lapsing this policy under the circumstances of this case.

This Honorable Court is respectfully requested to deny Aetna Life Insurance Company a Writ of Certiorari.

Respectfully submitted,

JACK O. BRITTAIN
113 East Fifth Street
Post Office Box 2662
Natchitoches, Louisiana

Jack O. Brittain

Attorney for the Respondent,
Don E. Lester, Jr.

CERTIFICATE

This is to certify that a copy of the above and foregoing Opposition to the Petition of Aetna Life Insurance Company for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit has been served on Mr. Benjamin C. King, attorney for the petitioner, Aetna Life Insurance Company, by handing him a copy this 29th day of March, 1971.

Jack O. Brittain

JACK O. BRITTAIN, Attorney for the Respondent, Don E. Lester, Jr.

EXHIBIT A

DON LESTER, JR. V.
AETNA LIFE INSURANCE COMPANY

Chronological Chart showing contacts in Louisiana much greater than in Wisconsin:

BELOW ARE CONTACTS WISCONSIN HAD WITH LESTER

* * *

	Date	Transaction	Amount
1)	5/1/52	Policy delivered to Lester	$ 50,000.00
2)	5/1/52	Lester paid Aetna (Lester 48 years old, but premium based on 53 year year old person)	2,252.50
3)	5/1/53	Lester paid Aetna	2,252.50
4)	5/1/54	Lester paid Aetna	2,252.50
5)	5/1/55	Lester paid Aetna	2,252.50
6)	5/1/56	Lester paid Aetna	2,252.50

AETNA IS DOMICILED IN NEITHER
WISCONSIN NOR LOUISIANA

EXHIBIT B

DON LESTER, JR. V.
AETNA LIFE INSURANCE COMPANY

Chronological Chart showing contacts in Louisiana much greater than in Wisconsin:

BELOW ARE CONTACTS LOUISIANA HAD WITH LESTER

	Date	Transaction	Amount
1)	2/ /57	Don Lester, Sr. became domiciled in La.—insured	
2)	2/ /57	Don Lester, Jr. became domiciled in La.—final beneficiary.	
3)	5/1/57	Lester paid Aetna	$ 2,252.50
4)	5/1/58	Lester paid Aetna	2,252.50
5)	5/1/59	Lester paid Aetna	2,252.50
6)	5/1/60	Lester paid Aetna	2,252.50
7)	12/22/60	Life Owner changed on policy to Don Lester, Sr.*	
8)	12/22/60	Beneficiary on policy changed to administrator of Don Lester, Sr.*	
9)	5/1/61	Lester paid Aetna	2,252.50
10)	8/2/61	Don Lester, Sr. obtained loan secured by policy—money delivered to Lester	12,398.84
11)	11/15/61	Beneficiary on policy changed to Don Lester, Jr.*	
12)	?	Premium notice dated 5/1/62, may have been mailed to Lester, Sr. (This was 1st premium notice following loan.)	
13)	?	Premium notice dated 5/1/62 may have been received by Lester	

	Date	Transaction	Amount
14)	7/?/62	Lester received notice that policy had lapsed because automatic premium loan provision was inapplicable because the loan on the policy plus the interest on the loan equalled the cash surrender value.	
15)	7/6/62	Lester prepared and mailed application for reinstatement plus check for amount of premium	2,703.68
16)	8/?/62	Lester received notice that he would have to have a physical examination before he would be reinstated.	
17)	1/23/63	Lester received check plus premium returned	2,703.68
18)	2/6/63	Don Lester died of Cardio Vascular problem	
19)	?	Aetna paid beneficiary under another policy	32,000.00
20)	?	Don Lester, Jr. made demand on Aetna for proceeds under policy.	
21)	?	Don Lester, Jr. employed a Louisiana attorney and made demand on Aetna for amount owed under policy unpaid.	
22)	?	Suit filed in Tenth Judicial District Court in and for the Parish of Natchitoches, State of Louisiana, by Don Lester against Aetna.	
23)	?	Payment is to be made in Louisiana, i.e. Louisiana is place of performance of policy.	

* May be sufficient changes on policy to modify policy in Louisiana to make new contract. Each time policy was modified, the modified policy was delivered to Lester in Louisiana.

EXHIBIT C

PAYMENTS MADE TO AETNA BY LESTER PLUS MINIMUM INTEREST EARNED ON PREMIUM TO DATE

EARNINGS ON PREMIUMS ARE BASED ON 6% SIMPLE INTEREST TO NOVEMBER 1, 1969

(Interest was also made on the interest made on the premiums. This is not included below.)

Date	Amount of Premium		Plus Earnings To Date		Equals
5/1/52	$ 2,252.50	+	$ 2,365.13	=	$ 4,617.63
5/1/52	$ 2,252.50	+	$ 2,229.98	=	$ 4,482.48
5/1/54	$ 2,252.50	+	$ 2,094.83	=	$ 4,347.33
5/1/55	$ 2,252.50	+	$ 1,959.68	=	$ 4,212.18
5/1/56	$ 2,252.50	+	$ 1,824.53	=	$ 4,077.03
5/1/57	$ 2,252.50	+	$ 1,689.38	=	$ 3,941.88
5/1/58	$ 2,252.50	+	$ 1,554.23	=	$ 3,806.73
5/1/59	$ 2,252.50	+	$ 1,486.65	=	$ 3,739.15
5/1/60	$ 2,252.50	+	$ 1,351.50	=	$ 3,604.00
5/1/61	$ 2,252.50	+	$ 1,216.35	=	$ 3,468.85
TOTAL	$22,525.00	+	$17,772.26	=	$40,297.26

Plus the District Court reduced the award by the premium that was due May 1, 1962. Therefore, the total payments to Aetna, plus their earnings on Mr. Lester's money, equals $42,549.76.

Therefore, Aetna stands to lose $7,450.24. But, Don Lester, Jr. stands to lose approximately $38,000.00.